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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,154	10/23/2001	Louis Lagler	P56559PCT	7578

8439 7590 04/23/2003

ROBERT E. BUSHNELL  
1522 K STREET NW  
SUITE 300  
WASHINGTON, DC 200051202

EXAMINER
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HYLTON, ROBIN ANNENETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 04/23/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Offic Action Summary</b>	Application No.	Applicant(s)
	09/890,154	LAGLER ET AL.
	Examiner Robin Hylton	Art Unit 3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1)  Responsive to communication(s) filed on \_\_\_\_\_.
- 2a)  This action is FINAL. 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4)  Claim(s) 1-10 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
  - 5)  Claim(s) \_\_\_\_\_ is/are allowed.
  - 6)  Claim(s) 1-10 is/are rejected.
  - 7)  Claim(s) \_\_\_\_\_ is/are objected to.
  - 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 23 October 2001 is/are: a)  accepted or b)  objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some \* c)  None of:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4)  Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference signs mentioned in the description:  $\omega$  (the angle between the pairs of elements), 33,34, and 53. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to because there is a lead line without an associated reference character in figure 3 to the right of reference character 21. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Specification*

4. The abstract of the disclosure is objected to because it contains the objectionable phrase "the invention relates to" and the term "means". Correction is required. See MPEP § 608.01(b).
5. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
6. The disclosure is objected to because of the following informalities:
  - the same reference name is used with different reference characters, e.g., "upper closure part" and 22 and 29;

- the same reference character is used with different reference names, e.g., 57 and active element and catch; and
- the term "element" is used as a blanket term to describe many of the closure features, e.g., 39, 23.1, and 23.2. This is somewhat confusing.

Appropriate correction is required.

#### ***Claim Objections***

7. Claims 1-10 are objected to because of the following informalities: the lack an indefinite article at the beginning of each statement, thus not conforming to the one sentence requirement for claims, and claims 1-8 contain "Patent Claim". Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

8. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

The structure of the closure is not clearly set forth in claim 1. Specifically, it is unclear what is intended by "two hinge connections each which border non-adjacent sides of said elements".

Are the two hinge connections of claim 8 the same as the two hinge connections in claim 1? Similarly, are the connecting element and the two planes of claim 8 in addition to the similarly named elements in claim 1?

As a result of using "means of two hinge connections", claim 1 fails to meet the 3-prong analysis of a "means plus function" claim set forth in the "Supplemental Examination Guidelines" effective June 21, 2000 and published in the Official Gazette on July 25, 2000. If applicant desires to invoke 35 USC 112, 6<sup>th</sup> paragraph, applicant must either modify the claim to include the phrase "means for" or show that even though the phrase "means for" is not used, the claim

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limitation is written as a function to be performed and does not recite sufficient structure, material, or acts which would preclude application of 35 USC 112, 6<sup>th</sup> paragraph.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1,2 and 5-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Nozawa (US 5,148,912).

To the degree claim 1 is understood in view of the rejection under 35 USC 112, 2<sup>nd</sup> paragraph, Nozawa anticipates the claims. It is noted that claim 1 is a product-by-process claim and the hinge connections being accessible in the mold from the inside of the closure and from outside the closure does not structurally limit the finished claimed product.

Regarding claim 5, the second closure part is stable in the open and closed positions.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nozawa in view of Dubach (US 5,392,938).

Nozawa teaches the claimed closure except for at least one element initially connecting the two closure parts in the closed position.

Dubach teaches it is known to initially secure two hinged closure parts together.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of an element to initially secure the two closure parts together in a closed position. Doing so provides a tamper-indicating arrangement and ensures the integrity of the contained product prior to first use.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various hinged closures are cited for their disclosures.

14. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302 or (703) 872-9303 for after final amendments. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

15. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_  
Signature \_\_\_\_\_

Date \_\_\_\_\_

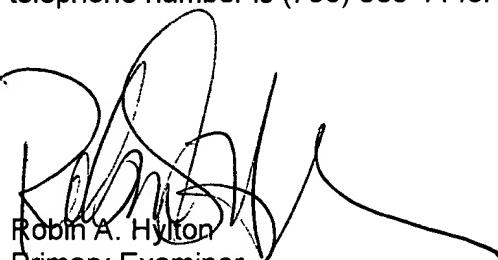
16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
April 19, 2003



Robin A. Hylton  
Primary Examiner  
GAU 3727